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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1059.

THE UNITED STATES, APPELLANTS,

vs.

THE STATE OF MISSISSIPPI.

APPEAL FROM THE COURT OF CLAIMS.

FILED.
SEP 24 1887
JAMES H. MCKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. ———.

THE UNITED STATES, APPELLANTS,

vs.

THE STATE OF MISSISSIPPI.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims.

I.—*Filed January* 18, 1887.—*J. R.*

THE STATE OF MISSISSIPPI
vs.
THE UNITED STATES. } No. 15460.

To your honors the judges of the Court of Claims:

The petition of the State of Mississippi respectfully shows:

That by the fifth section of the act of Congress entitled "An act to enable the people of the western part of Mississippi Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," it was, for the several considerations in said act mentioned, provided that five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the first day of December, 1817, after deducting all expenses incident to the same and payment as provided, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within said State, under the direction of the legislature thereof, and two fifths to the making of roads leading to said State, under the direction of Congress. (U. S. Statutes, vol. 3, p. 348.)

That all the conditions and requirements of said act required of said State of Mississippi, or its constitution or people thereof, have been duly complied with.

2 That by section seventeen of the act of Congress affirmed September 4, 1841, entitled "An act to appropriate the proceeds of the sales of public lands and to grant pre-emption rights" (vol. 5, ch. 16, p. 453), it was provided, for good and sufficient considerations, that said two per cent. net proceeds, reserved in said first-named act to be applied under the direction of Congress, should be relinquished to said State of Mississippi as therein provided, and paid quarterly as the same might thereafter accrue.

That the conditions and provisions of said relinquishment to be performed by said State and its legislature were duly complied with, yet the United States have not complied with their obligation in the premises, and have failed to pay said State both said three and two per cent.; and there was, on the 20th day of February, 1886, and now is, due said State therein, by the terms of said act, the sum of forty-one thousand four hundred and fifty-three dollars and ninety-one cents, which sum has been duly ascertained and certified according to law; but although demand has been made, the same has not been paid to your petitioner, but is withheld by the Treasury Department of the United States upon the pretense that it may apply such moneys as a count against taxes levied by act of Congress upon the lands and private property of citizens of said State, and alleged to be due from them to the United States. Your petitioner further shows that it has not assumed the payment of such taxes, nor given its consent to such application of said money so due, and that there is no warrant in law therefor.

That no assignment or transfer of said claim, or any part thereof or

interest therein, has been made by said State, and said sum of money is due to said State from the United States.

3 Wherefore your petitioner prays judgment for the sum of forty-one thousand four hundred and fifty-three dollars and ninety-one cents.

VAN H. MANNING,
Att'y for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Before me, a notary public in and for said District, personally came, this 18th day of January, 1887, Van H. Manning, who, being first duly sworn, says that he is the attorney for the plaintiff duly authorized to prosecute the claim in the foregoing petition described; that he has personally examined into the case, is familiar with the facts, and that the foregoing petition is true, as he verily believes.

VAN H. MANNING.

Sworn to and subscribed before me this 18th day of January, 1887.
[SEAL.] M. A. BALLINGER.
Notary Public.

4 II.—*Defendants' motion to dismiss petition for want of jurisdiction.—Filed April 2, 1887.*

Now come the defendants and move to dismiss the petition herein for the reason that the Court of Claims has neither original nor concurrent jurisdiction, under the Constitution and laws of the United States, to hear and determine a cause in which a State is a party in a suit against the United States.

H. J. MAY,
Assistant Attorney.

5 III.—*Order of the court overruling defendants' motion to dismiss.*

STATE OF MISSISSIPPI
vs. } No. 15460.
THE UNITED STATES.

At a Court of Claims held in the city of Washington, D. C., on the 18th day of April, A. D. 1887:

It was ordered that the motion of defendants to dismiss be overruled.

6 IV.—*General traverse.—Filed Apr. 27, 1887.*

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

7 IV.—*Defendants' plea of set-off.*—*Filed April* 27, 1887.

The defendants, for special answer to the claimant's petition, by way of set-off, say that at the time of the filing of the petition herein, and long prior thereto, the said claimant was, and is now, indebted to the defendants in the sum of $41,453.91 as a balance of direct tax, under the act of Congress approved Aug. 5, 1861, entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other purposes."

Wherefore the defendants pray that said sum of $41,453.91 may be set off against the petitioner's claim herein, and for all proper relief.

SPECIAL PLEA TO THE JURISDICTION OF THE COURT.

Now come the defendants and move the court to dismiss all that part of the claim herein which did not accrue within six years prior to the filing of the petition, for want of jurisdiction.

H. J. MAY,
Assistant Attorney.

8 REPLICATION.—FILED APRIL 28, 1887.

The plaintiff, replying to the answer or special plea of the defendant and the various matters of offset therein contained, denies each and every allegation thereof.

Denies that the plaintiff is indebted to the defendant on account of any taxes or otherwise, or that defendant is entitled to any offset to plaintiff's said claim. Wherefore plaintiff asks judgment as prayed in the petition herein.

VAN H. MANNING,
J. B. EDWARDS,
Of Counsel for Plaintiff.

9 VII.—*Findings of fact.*—*Filed May* 16, 1887.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The balance of the amount due the State of Mississippi from the United States on account of the five per centum fund accruing between November 28, 1882, and June 24, 1884, under the act of March 3, 1819, ch. 47, sec. 5 (3 Stat. L., 489), and the act of September 4, 1841, ch. 16, sec. 17 (5 Stat. L., 453), as found by the Treasury Department and admitted by the defendants, is $41,453.91 over and above payments heretofore made.

II.

Against said sum so found due the Treasury Department charges the same amount from the amount of the direct tax assessed and apportioned to said State of Mississippi by the act of August 5, 1861, ch. 45 (12 Stat. L., 293), and the act of June 7, 1862 (12 Stat. L., 423), set up in this case as a counter-claim.

III.

The State of Mississippi has not assumed to pay said direct tax or any portion thereof.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover the sum of $41,453.91.

10 VIII.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 16th day of May, A. D. 1887, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said the State of Mississippi do have and recover of and from the United States the sum of forty-one thousand four hundred and fifty-three $\frac{91}{100}$ dollars ($41,453.91).

11 IX.—*Application of defendants for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 16th day of May, 1887, in favor of claimant, the defendants, by their Attorney-General, on the 16th day of June, 1887, make application for, and give notice of, an appeal to the Supreme Court of the United States.

A. H. GARLAND,
Attorney-General.

Filed and allowed June 16, 1887.

WILLIAM A. RICHARDSON,
Chief Justice.

12 X.

In the Court of Claims.

THE STATE OF MISSISSIPPI
vs.
THE UNITED STATES. } No. 15460.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the final judgment of the court, of the application of defendants for an appeal to the Supreme Court of the United States, and the allowance of the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this thirtieth day of August, A. D. 1887.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk, Court of Claims.

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In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
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III.

The State of Mississippi has not assumed to pay said direct tax or any portion thereof.

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In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
THE STATE OF MISSISSIPPI. } No. 1059.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

The claim in this case is for $41,453.91, being the 5 per centum net proceeds of the sales of public lands within the limits of the State of Mississippi between November 28, 1882, and June 24, 1884, under the act of March 3, 1819. (3 Stat. L., 489.) See Finding I. (Rec., 3.)

The petition was presented to the Court of Claims January 18, 1887. (Rec., 1.) It was filed within six years after the claim accrued.

A motion was filed in the Court of Claims on behalf of the appellants, April 2, 1887, to dismiss the cause for

want of jurisdiction. The motion was overruled April 18, 1887. (Rec., 2.)

A general traverse was filed April 27, 1887. (Rec., 2.)

A special plea, by way of set-off or counter-claim, was filed April 27, 1887, and at the same time a special plea, based on the statute of limitations, to the jurisdiction of the court. (Rec., 3.)

A replication to the plea of set-off or counter-claim was filed April 28, 1887. (Rec., 3.) The plea of set-off or counter-claim was dismissed, and the special plea to the jurisdiction overruled, and judgment entered for the claimant upon the findings of fact for $41,453.91. (Rec., 3, 4.)

From the rulings of the court, and the final judgment, an appeal was granted to the Supreme Court, June 16, 1887. (Rec., 4.)

Inasmuch as the claim appears, from the findings of fact, to have accrued with six years prior to its presentation to the Court of Claims, no error is assigned, in consequence of the overruling of the plea, on this ground. (Rec., 3.)

There is no claim in this case for indemnity for swamp lands, as in the case of the State of Louisiana, No. 1025, submitted at the present time.

ASSIGNMENTS OF ERROR.

I.

The Court of Claims erred in overruling the motion to dismiss for want of jurisdiction on the ground of objection that said court has neither original nor concurrent

jurisdiction under the Constitution and laws of the United States to hear and determine a cause in which a State is a party in a suit against the United States. (Rec., 2.)

II.

The Court of Claims erred in dismissing the set-off or counter-claim of the United States. (Rec., 3.)

III.

The Court of Claims erred in rendering final judgment for the State of Mississippi for the sum of $41,453.91. (Rec., 4.)

IV.

The Court of Claims erred in not dismissing the petition and cause of the State of Mississippi, and in not rendering final judgment to that effect for the United States.

BRIEF OF ARGUMENT.

The above assignments of error are presented and argued in the case of The United States, appellant, *vs.* The State of Louisiana, No. 1025, submitted under the twentieth rule at the present term. Some of the assignments in that case do not arise in this, but all of the above assignments will be considered and passed upon by the court in that case. We therefore ask that the argument